

LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
REBECCA A. PETERSON (241858)  
100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
E-mail: rapeterson@locklaw.com  
rkshelquist@locklaw.com

Attorneys for Plaintiff

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

GEORGEANNE HALL individually  
and on behalf of a class of similarly  
situated individuals,

**PLAINTIFF,**

V.

HILL'S PET NUTRITION, INC., and  
HILL'S PET NUTRITION SALES,  
INC.,

**DEFENDANTS.**

Case No. 2:19-cv-01423

CLASS ACTION

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff Georgeanne Hall (“Plaintiff”), individually and on behalf of  
3 all others similarly situated, by and through her undersigned attorneys, brings this  
4 Class Action Complaint against Defendants Hill’s Pet Nutrition, Inc., and Hill’s Pet  
5 Nutrition Sales, Inc., (together, “Hill’s” or “Defendants”), for their negligent,  
6 reckless, and/or intentional practice of misrepresenting, failing to test for, and failing  
7 to fully disclose the presence of toxic levels of Vitamin D in their Contaminated Dog  
8 Foods (defined below) and for selling Contaminated Dog Foods that are adulterated  
9 and do not conform to the labels, packaging, advertising, and statements throughout  
10 the United States. Plaintiff seeks both injunctive and monetary relief on behalf of  
11 the proposed Class (defined below), including: (i) requiring full disclosure of all  
12 such substances and ingredients in Defendants’ marketing, advertising, and labeling;  
13 (ii) requiring testing of all ingredients and final products for such substances; (iii)  
14 prohibiting the sale of any adulterated dog food in the future (iv) requiring  
15 Defendants to offer Plaintiff and the proposed class \$500 vouchers for each can of  
16 Contaminated Food as they have offered veterinarians and (iv) restoring monies to  
17 the members of the proposed Class. Plaintiff alleges the following based upon  
18 personal knowledge as well as investigation by their counsel and discovery and as  
19 to all other matters, upon information and belief.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **I. THE ADULTERATED CONTAMINATED DOG FOODS WERE**  
2 **IMPROPERLY SOLD AND MISLEADINGLY MARKETING TO**  
3 **CONSUMERS**

4 2. Defendants manufacture, market, advertise, label, distribute, and sell  
5 pet food under the brand names Hill's Prescription Diet ("Prescription Diet") and  
6 Hill's Science Diet ("Science Diet") dog foods (collectively "Contaminated Dog  
7 Foods") throughout the United States, including in this District. Hill's describes  
8 each brand as follows:  
9

10 (a) "Prescription Diet® brand pet foods are formulated to address  
11 specific medical conditions that can develop in pets. Prescription Diet foods  
12 are available through your pet's veterinarian, or through authorized online  
13 retailers. If you have a pet with a medical condition, please speak to your  
14 veterinarian to see if a Prescription Diet pet food is right for your dog or cat.  
15 Prescription Diet is clinical nutrition to improve quality of life™."

16 (b) "Science Diet® brand pet foods are formulated to meet the needs  
17 of healthy pets during various life stages. Science Diet healthy pet food offers  
18 clinically proven benefits that promote vitality and well-being at any age or  
19 lifestyle with a full range of precisely balanced products. Science Diet has  
20 100% of what pets need, 0% of what they don't. Science Diet has the finest  
21 natural ingredients your pet will love and no artificial colors, flavors or  
22 preservatives to help ensure that your pet lives a happy, healthy life."  
23  
24  
25  
26  
27  
28

1           3. Defendants have created a niche in the pet food market by marketing  
2 foods they claim will “help enrich and lengthen the special relationships between  
3 people and their pets.” Defendants’ website states, “Guided by science, we  
4 formulate our food with precise balance so your pet gets all the nutrients they need  
5 — and none they don’t.”

7           4. The Science Diet foods are allegedly manufactured using  
8 “INGREDIENTS CHOSEN FOR TASTE & QUALITY.” Each can of Science Diet  
9 is described as “Premium Dog Food.”

11           5. With respect the Prescription Diet foods, Hill’s promises, “[O]nly the  
12 best ingredients from the most trusted sources are the foundation for all Prescription  
13 Diet® foods. We also conduct 5 million quality and safety checks per year at the  
14 facility as well as voluntary third-party inspections nearly every month to ensure that  
15 we are maintaining the highest standards.” Each can of Prescription Diet promises  
16 “clinical nutrition.”

19           6. Defendants’ website makes the following representations and  
20 promises:  
21



## Every transformation starts with science

Whether it's conducting industry-leading research, analyzing nutrient levels in each of our products or selecting optimal ingredients for your pet's health, Hill's is driven by science for results you can see — in every little transformation.

7. Defendants make numerous other representations and promises about the Contaminated Dog Foods' nutrition as well as their supply chain and quality control measures, including but not limited to the following:

(a) "Our quality and safety standards are so rigorous, they're modeled after human food manufacturers — so your pet gets a food made with their best interest in mind."

(b) "With 220+ veterinarians, PhD nutritionists and food scientists, we develop breakthrough innovations for your pet's health."

(c) "We only accept ingredients from suppliers whose facilities meet stringent quality standards and who are approved by Hill's."

(d) "Not only is each ingredient examined to ensure its safety, we also analyze each product's ingredient profile for essential nutrients to ensure your pet gets the stringent, precise formulation they need."

(e) "We conduct annual quality systems audits for all manufacturing facilities to ensure we meet the high standards your pet deserves."

1 (f) “We demand compliance with current Good Manufacturing  
2 Practices (cGMP) and Hill’s high quality standards, so your pet’s food is  
3 produced under clean and sanitary conditions.”  
4

5 (g) “We conduct final safety checks daily on every Hill's pet food  
6 product to help ensure the safety of your pet's food.”  
7

8 (h) “Additionally, all finished products are physically inspected and  
9 tested for key nutrients prior to release to help ensure your pet gets a consistent  
10 product bag to bag.”  
11

12 8. These foods are allegedly formulated for the specific health needs of  
13 dogs and are sold for a premium price because of these claims. However,  
14 Defendants announced a recall on January 31, 2019, which it expanded on February  
15 8, 2019, of certain Contaminated Dog Foods “due to elevated levels of Vitamin D.”  
16 The full list of Contaminated Dog Foods that were recalled include:<sup>1</sup>  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>1</sup> *Voluntary Product Recall Frequently Asked Questions*,  
28 <https://www.hillspet.com/productlist/faq#vitamin-d-symptoms> (last visited Feb. 15, 2019).

## a) Hill's® Prescription Diet® c/d Multicare Canine Chicken &amp; Vegetable Stew, 12.5 ounces



## b) Hill's® Prescription Diet® i/d Canine Chicken &amp; Vegetable Stew, 12.5 ounces



c) Hill's® Prescription Diet® i/d Canine Chicken & Vegetable Stew, 5.5 ounces



d) Hill's® Prescription Diet® z/d Canine, 5.5 ounces



## e) Hill's® Prescription Diet® g/d Canine, 13 ounces



## f) Hill's® Prescription Diet® i/d Canine, 13 ounces



g) Hill's® Prescription Diet® j/d Canine, 13 ounces



h) Hill's® Prescription Diet® k/d Canine, 13 ounces



i) Hill's® Prescription Diet® w/d Canine, 13 ounces



j) Hill's® Prescription Diet® z/d Canine, 13 ounces



- k) Hill's® Prescription Diet® Metabolic + Mobility Canine Vegetable & Tuna Stew, 12.5 ounces



- l) Hill's® Prescription Diet® w/d Canine Vegetable & Chicken Stew, 12.5 ounces



m) Hill's® Prescription Diet® i/d Low Fat Canine Rice, Vegetable & Chicken Stew, 12.5 ounces



n) Hill's® Prescription Diet® Derm Defense® Canine Chicken & Vegetable Stew, 12.5 ounces



o) Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée, 5.8 ounces



p) Hill's® Science Diet® Puppy Chicken & Barley Entrée, 13 ounces



q) Hill's® Science Diet® Adult Chicken & Barley Entrée, 13 ounces



r) Hill's® Science Diet® Adult Turkey & Barley Entrée, 13 ounces



s) Hill's® Science Diet® Adult Chicken & Beef Entrée, 13 ounces



u) Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée, 13 ounces



v) Hill's® Science Diet® Adult 7+ Beef & Barley Entrée, 13 ounces



w) Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée, 13 ounces



x) Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew, 12.5 ounces



y) Hill's® Science Diet® Adult 7+ Youthful Vitality Chicken & Vegetable Stew, 12.5 ounces



9. The recall involves an estimated 675,000 cases of canned food.

10. According to Defendants, “[they] learned of the potential for elevated Vitamin D levels in select canned dog foods after receiving a complaint about a dog exhibiting signs of elevated Vitamin D levels. Our investigation confirmed that a product contained elevated levels of Vitamin D due to a supplier error.”<sup>2</sup>

11. Defendants explain the dangers of excessive Vitamin D on their website:<sup>3</sup>

12. The FDA repeated these warnings when it announced the recall: “While Vitamin D is an essential nutrient for dogs, ingestion of elevated levels can lead to

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

1 potential health issues depending on the level of Vitamin D and the length of  
2 exposure, and dogs may exhibit symptoms such as vomiting, loss of appetite,  
3 increased thirst, increased urination, excessive drooling, and weight loss. Vitamin  
4 D, when consumed at very high levels, can lead to serious health issues in dogs  
5 including renal dysfunction.”<sup>4</sup>

7 13. The inclusion of excessive Vitamin D at injurious levels renders the  
8 Contaminated Dog Foods as adulterated under relevant federal and state law  
9

10 **II. DEFENDANTS KNOWINGLY AND/OR RECKLESSLY DELAYED**  
11 **THE RECALL OF THE CONTAMINATED DOG FOODS DESPITE**  
12 **ASSURANCES OF SUPERIOR QUALITY AND SAFETY CONTROLS**

13 14. Defendants’ recall came over two months after pet food manufacturers  
14 Sunshine Mills, Inc.; Ahold Delhaize; Kroger; King Soopers; ELM Pet Foods, Inc.;  
15 ANF, Inc.; Lidl; Natural Life Products; and Nutrisca “found that samples of the dog  
16 food contained excessive, potentially toxic amounts of Vitamin D” and announced  
17 recalls in November and December 2018.<sup>5</sup> “FDA scientists [] evaluated samples of  
18 these products, and State and private lab test results indicate[d] that the food  
19 contained as much as approximately 70 times the intended amount of Vitamin D.”<sup>6</sup>  
20  
21  
22  
23  
24

---

25 <sup>4</sup> *Hill’s Pet Nutrition Voluntarily Recalls Select Canned Dog Food for Excessive Vitamin D*,  
26 <https://www.fda.gov/Safety/Recalls/ucm630232.htm> (last visited Feb. 15, 2019).

27 <sup>5</sup> *FDA Alerts Pet Owners About Potentially Toxic Levels of Vitamin D in Several Dry Pet Foods*,  
28 <https://www.fda.gov/animalveterinary/newsevents/ucm627485.htm> (last visited Feb. 15, 2019).

<sup>6</sup> *Id.*

1           15. Defendants failed to act in a timely manner when it learned of the broad  
2 scope of the initial Vitamin D recall in November 2018. They mislead consumers  
3 by claiming:

4           (a) “Our quality and safety standards are so rigorous, they’re  
5 modeled after human food manufacturers — so your pet gets a food made  
6 with their best interest in mind.”

7           (b) “We only accept ingredients from suppliers whose facilities meet  
8 stringent quality standards and who are approved by Hill's.”

9           (c) “Not only is each ingredient examined to ensure its safety, we  
10 also analyze each product's ingredient profile for essential nutrients to ensure  
11 your pet gets the stringent, precise formulation they need.”

12           (d) “We conduct annual quality systems audits for all manufacturing  
13 facilities to ensure we meet the high standards your pet deserves.”

14           (e) “We demand compliance with current Good Manufacturing  
15 Practices (cGMP) and Hill's high quality standards, so your pet's food is  
16 produced under clean and sanitary conditions.”

17           (f) “We conduct final safety checks daily on every Hill's pet food  
18 product to help ensure the safety of your pet's food.”

19           (g) “Additionally, all finished products are physically inspected and  
20 tested for key nutrients prior to release to help ensure your pet gets a consistent  
21 product bag to bag.”

1           16. Defendants further mislead consumers by promising their “Premium  
2 Dog Food” and “Clinical Nutrition.”

3           17. Plaintiff brings this action individually and on behalf of all other  
4 similarly situated consumers within California who purchased the Contaminated  
5 Dog Foods, in order to cause the disclosure of the presence and/or risk of inclusion  
6 of elevated levels of Vitamin D or other ingredients in the Contaminated Dog Foods  
7 that do not conform to the labels, packaging, advertising, and statements; to correct  
8 the false and misleading perception Defendants have created in the minds of  
9 consumers that the Contaminated Dog Foods are suitable for consumption by dogs,  
10 healthy, nutritious, premium, clinically approved, subject to strict quality control  
11 measures, and/or unadulterated; and to obtain redress for those who have purchased  
12 the Contaminated Dog Foods.

### 13 **III. JURISDICTION AND VENUE**

14           18. This Court has original jurisdiction over all causes of action asserted  
15 herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the  
16 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest  
17 and costs and more than two-thirds of the Class reside in states other than the states  
18 in which Defendants are citizens and in which this case is filed, and therefore any  
19 exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

20           19. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because  
21 Plaintiff resides and suffered injury as a result of Defendants’ acts in this District,  
22  
23  
24  
25  
26  
27  
28

1 many of the acts and transactions giving rise to this action occurred in this District,  
2 Defendants' principal place of business and headquarters are in this District;  
3 Defendants conduct substantial business in this District, Defendants have  
4  
5 intentionally availed themselves of the laws and markets of this District, and  
6 Defendants are subject to personal jurisdiction in this District.

7 **IV. PARTIES**

8  
9 20. Plaintiff Georgeanne Hall, and at all times relevant hereto has been, a  
10 resident of the state of California. Plaintiff purchased the following Contaminated  
11 Dog Foods for her dog, Taki, a chihuahua mix who passed away in February 2019  
12 from renal failure. Taki was his mom's travel companion and is greatly missed.  
13 Plaintiff Hall purchased the Hill's® Prescription Diet® i/d® Canine Vegetable &  
14 Chicken Stew and Hill's® Prescription Diet® i/d® Low Fat Canine Rice, Vegetable  
15 & Chicken Stew starting in late November 2018 through January 2019 from Allen  
16  
17 Animal Hospital, Shop City VCA Animal Hospital, California Veterinary  
18 Specialists and VCA Animal Hospital in Hesperia, California. Prior to purchasing  
19 the Contaminated Dog Foods, Plaintiff saw the nutritional and quality control claims  
20 on the packaging and heard the representations from the veterinarian, which she  
21 relied on when deciding to purchase the Contaminated Dog Foods. During that time,  
22 based on the false and misleading claims, representations, advertisements, and other  
23 marketing by Defendants, Plaintiff was unaware that the Contaminated Dog Foods  
24 contained and/or had a risk of containing elevated levels of Vitamin D that do not  
25  
26  
27  
28

1 conform to the labels, packaging, advertising, and statements and would not have  
2 purchased the food if that was fully disclosed. Plaintiff Hall injured by paying a  
3 premium for the Contaminated Dog Foods that have no or *de minimis* value based  
4 on the elevated levels of Vitamin D that do not conform to the labels, packaging,  
5 advertising, and statements.  
6

7         21. As the result of Defendants' negligent, reckless, and/or knowingly  
8 deceptive conduct as alleged herein, Plaintiff was injured when she paid the purchase  
9 price or a price premium for the Contaminated Dog Foods that did not deliver what  
10 was promised. Plaintiff Hall paid the premium price on the assumption that the  
11 labeling of the Contaminated Dog Foods was accurate and that it was suitable for  
12 consumption by dogs, healthy, nutritious, premium, clinically approved, subject to  
13 strict quality control measures, and/or unadulterated. Plaintiff would not have paid  
14 this money had she known that the Contaminated Dog Foods contained and/or had  
15 risk of containing elevated levels of Vitamin D or other ingredients that do not  
16 conform to the labels, packaging, advertising, and statements. Plaintiff was further  
17 injured because the Contaminated Dog Foods have no or *de minimis* value based on  
18 the elevated levels of Vitamin D or other ingredients that do not conform to the  
19 labels, packaging, advertising, and statements. Damages can be calculated through  
20 expert testimony at trial. Further, should Plaintiff encounter the Contaminated Dog  
21 Foods in the future, she could not rely on the truthfulness of the packaging, absent  
22 corrective changes to the packaging and advertising of the Contaminated Dog Foods.  
23  
24  
25  
26  
27  
28

22. Defendant Hill's Pet Nutrition, Inc. is a Delaware corporation, with its principal place of business in Kansas. Hill's is located at 400 SW 8th Avenue, Topeka, Kansas 66603.

23. Defendant Hill's Pet Nutrition Sales, Inc. is a Delaware corporation, with its principal place of business in Kansas. Defendant Hill's Pet Nutrition Sales, Inc. is authorized by the California Secretary of State to do business within the State of California.

**V. COMMON FACTUAL ALLEGATIONS**

**A. Defendants Marketed the Contaminated Dog Foods to Consumers with Specific Promises of Providing Medical and/or Health Solutions to Pets Yet Failed to Disclose the Foods were Adulterated**

24. Defendants formulate, develop, manufacture, label, package, distribute, market, advertise, and sell their Contaminated Dog Foods across the United States, including at veterinary clinics and pet retailers, as well as through online retailers like Amazon and Chewy. No matter where consumers purchase the Contaminated Dog Foods, they are packaged in sealed containers with the same labeling and packaging that is displayed on the Defendants' website.<sup>7</sup>

25. The adulterated Contaminated Dog Foods are sold either only with prescription from a veterinarian or with the promotion of "veterinarian recommended." Moreover, these foods contain marketing representations that each

---

<sup>7</sup> See, e.g., <https://www.hillspet.com/dog-food> (last visited February 11, 2019)

1 is formulated for specific issues or breeds, including weight management and  
2 digestive or kidney issues. Defendants also make a number of representations about  
3 the superiority of their quality control and manufacturing processes.

4  
5 26. Defendants' website touts the Contaminated Dog Foods' nutritional  
6 qualities, claiming that the products "[s]upport[ ] a healthy immune system,"<sup>8</sup>  
7 "improve and lengthen quality of life,"<sup>9</sup> "can be used long-term,"<sup>10</sup> "[p]rotect[ ] vital  
8 kidney & heart function,"<sup>11</sup> "[s]upport your dog's natural ability to build lean muscle  
9 daily,"<sup>12</sup> and "meet[ ] the special nutritional needs of puppies and adult dogs."<sup>13</sup>

10  
11 27. Defendants also issue a "100% Satisfaction" money-back guarantee  
12 with every Contaminated Dog Food purchase. Yet, Defendants negligently,  
13 recklessly, and/or knowingly omitted that the Contaminated Dog Foods were  
14 adulterated based on the excessive levels of Vitamin D and should not be sold for  
15 consumption by pets.  
16  
17  
18  
19  
20

---

21 <sup>8</sup> See, e.g., <https://www.hillspet.com/dog-food/pd-id-canine-canned#> (last visited February  
22 11, 2019).

23 <sup>9</sup> See, e.g., <https://www.hillspet.com/dog-food/pd-kd-canine-canned> (last visited February  
24 11, 2019).

25 <sup>10</sup> See, e.g., <https://www.hillspet.com/dog-food/pd-id-sensitive-canine-dry#> (last visited  
26 February 11, 2019).

27 <sup>11</sup> See, e.g., <https://www.hillspet.com/dog-food/pd-kd-canine-canned#> (last visited February  
28 11, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., [https://www.hillspet.com/dog-food/pd-id-canine-chicken-and-vegetable-stew-  
canned](https://www.hillspet.com/dog-food/pd-id-canine-chicken-and-vegetable-stew-canned) (last visited February 11, 2019).

1           28. Based on Defendants’ representations, warranties, labels, various  
2 affirmations of fact about the quality of their manufacturing processes and their  
3 Science and Prescription Diets, consumers across the country paid a premium for the  
4 Contaminated Dog Foods.  
5

6           29. The Contaminated Dog Foods that consumers across the country have  
7 fed to their pets have proven to be toxic, causing symptoms of renal failures such as  
8 dehydration, diarrhea, loss of appetite, increased thirst, lethargy, vomiting, and often  
9 death.<sup>10</sup>  
10

11           30. In the end, Defendants chose to advertise, label, and market its  
12 products, including the Contaminated Dog Foods, as pure, high quality, healthy and  
13 safe for dogs to ingest without disclosing that the Contaminated Dog Foods were  
14 adulterated and also delayed a recall that was required to ensure the safety of pets.  
15  
16

17           **B. Vitamin D Toxicity**

18           31. Vitamin D is an essential nutrient for dogs. It is added to pet foods  
19 during the manufacturing process using a supplement. This is usually purchased by  
20 pet food manufacturers from suppliers as part of a “pre-mix” of vitamins and  
21 minerals and then added to the pet food “mixer.”  
22

23           32. Defendants’ website explains, “Unlike people (who can synthesize  
24 Vitamin D), dogs rely solely on dietary sources for Vitamin D. Therefore, pet food  
25  
26  
27  
28

1 is often enriched with Vitamin D<sup>14</sup>.” However, Vitamin D can cause mild to serious  
2 health problems, including renal failure, when it exceeds certain levels. Symptoms  
3 of excessive Vitamin D consumption include vomiting, loss of appetite, increased  
4 thirst, increased urination, excessive drooling, and weight loss. Pet food containing  
5 excessive levels of Vitamin D that is injurious (such as here) is adulterated food  
6 under various relevant state and federal regulations.  
7

8  
9 33. Specifically, under the FDCA, a food is adulterated if it “bears or  
10 contains any poisonous or deleterious substance which may render it injurious to  
11 health.” 21 U.S.C. § 342. Under California law, pet food is considered adulterated  
12 if “it bears or contains any poisonous or deleterious substance that may render it  
13 injurious to health,” “If it contains a pet food ingredient for which a standard of  
14 identity has been established and the pet food ingredient fails to meet that standard”  
15 or “if damage or inferiority has been concealed in any manner.” Cal. Health &  
16 Safety Code § 113090(a),(c), (h). California’s statute also provides that pet food  
17 ingredients “of animal or poultry origin shall be only from animals or poultry  
18 slaughtered or processed in an approved or licensed establishment.... Animal or  
19 poultry classified as ‘deads’ are prohibited.” Cal. Health & Safety Code § 113035.  
20 Other relevant states likewise prohibit the sale of adulterated pet food. Ohio Rev.  
21 Code Ann. § 923.41, *et seq.*; Ala. Code § 2-21-23; Fla. Stat. § 500.10; Ga. Code  
22  
23  
24  
25  
26

27 <sup>14</sup> Voluntary Product Recall Frequently Asked Questions,  
28 <https://www.hillspet.com/productlist/faq#vitamin-d-symptoms> (last visited Feb. 15, 2019).

1 Ann. § 2-13-11; 505 Ill. Comp. Stat. Ann. 30/11.1; N.Y. Agric. & Mkts. Law § 199-  
2 A; Tex. Agric. Code Ann. § 141.002, *et seq.*

3 34. Pet food recalls due to excessive Vitamin D began on November 2,  
4 2018 with a recall from Natural Life Pet Products and Nutrisca dry dog foods.  
5 Recalls by several other manufacturers followed, culminating with Defendants'  
6 recalls on January 31, 2019 and February 8, 2019.  
7

8 35. Natural Life Pet Products, the first manufacturer to initiate a recall,  
9 identified a "formulation error" as the root of the problem. Defendants have only  
10 stated, "Our investigation confirmed elevated levels of Vitamin D due to a supplier  
11 error." Neither the manufacturers nor the FDA have disclosed where in the  
12 manufacturing process these errors occurred.  
13  
14

15 **C. The Pet Food Industry, Including Defendants, Knows that**  
16 **the Average Consumer Cares and Considers What They Are**  
17 **Feeding Their Pet**

18 36. Consumers are becoming increasingly concerned with what they feed  
19 their pets. In addition, Defendants have chosen to market specifically to consumers  
20 that are trying to address medical and/or health issues with their pets.  
21

22 37. The pet food industry has been reporting on the humanization of both  
23 pets and pet food for years.  
24  
25  
26  
27  
28

1 38. A recent survey done by a pet food giant showed that “95 percent [of  
2 pet owners] agreed they saw their canine as part of the family.” And 73 percent of  
3 them responded they would make sure their “pet gets food before they do.”<sup>15</sup>  
4

5 39. This is nothing new; a 2017 survey reported the same results: “In the  
6 US, 95% of pet owners consider their pets to be part of the family—up 7 points from  
7 2007, according to a survey by Harris Poll.”<sup>16</sup>  
8

9 40. Indeed, based on this, it was reported that “there isn’t much people  
10 won’t do for their pets, and this sentiment has only strengthened over the past few  
11 years, especially for pet food. Pet food accounts for 76% of the pet care category,  
12 representing a significant opportunity for pet companies.”<sup>17</sup>  
13

14 41. And, pet owners want “pet food options that address the same health  
15 concerns currently influencing human food production, such as unnatural  
16 preservatives and genetically modified ingredients—and they’re serious about these  
17 preferences.”<sup>18</sup>  
18

19 Treating pets like one of the family continues to be a popular trend  
20 among pet owners; however, today, their purchases are more and more  
21 functionally driven as health becomes a top priority.

22 42. Defendants’ marketing uses this shift in paradigm of pet owners of  
23 humanization of pet food and viewing pets as family, stating “We believe daily  
24

25 <sup>15</sup> <https://people.com/pets/study-women-prefer-dogs-to-partner/>

26 <sup>16</sup> [https://www.petfoodindustry.com/articles/5695-report---say-pets-are-part-of-the family](https://www.petfoodindustry.com/articles/5695-report---say-pets-are-part-of-the-family)

27 <sup>17</sup> *Id.*

28 <sup>18</sup> <http://www.nielsen.com/us/en/insights/reports/2016/the-humanization-of-petfood.html>

1 nutrition is the single most important thing you can do to enrich and lengthen the  
2 special relationship you have with your pet.”<sup>19</sup>

3 43. Thus, consumers are willing to pay a premium for their pet food if their  
4 pet food is of superior quality, as Defendants advertised. This is especially true of  
5 consumers who are purchasing prescription foods for their pets.  
6

7 **D. Plaintiff’s Reliance was Reasonable and Foreseen by**  
8 **Defendants**

9 44. Plaintiff reasonably relied on Defendants’ own claims, warranties,  
10 representations, advertisements, and other marketing concerning the particular  
11 qualities and benefits of the Contaminated Dog Foods.  
12

13 45. Plaintiff also relied upon Defendants’ false and/or misleading  
14 representations alleged herein, including the websites and/or the Contaminated Dog  
15 Foods’ labels and packaging in making their purchasing decisions.  
16

17 46. Any reasonable consumer would consider the labeling of a product (as  
18 well as the other false and/or misleading representations alleged herein) when  
19 deciding whether to purchase. Here, Plaintiff relied on the certainty of the various  
20 specific statements and misrepresentations by Defendants that the Contaminated  
21 Dog Foods were suitable for consumption by dogs, healthy, nutritious, premium,  
22 clinically approved, subject to strict quality control measures, and/or unadulterated  
23  
24  
25  
26  
27

28 <sup>19</sup> <https://www.hillspet.com/>

1 with no disclosure of the inclusion of excess Vitamin D or other ingredients that do  
2 not conform to the labels, packaging, advertising, and statements.

3 **E. Defendants' Knowledge of the Vitamin D Contamination**

4  
5 47. Defendants' recall of the Contaminated Dog Foods was not an isolated  
6 incident. It came approximately three months after a widespread recall of other pet  
7 foods containing excess Vitamin D.

8  
9 48. When the first Vitamin D recall occurred on November 3, 2018, he  
10 FDA began to test products and concluded that a wide swath of dog foods sold in  
11 the United States contained potentially lethal doses of Vitamin D sometimes as much  
12 as 70 times more than the recommended dosage.

13  
14 49. On December 3, 2018, the FDA issued a press release warning pet  
15 owners about potentially toxic levels of Vitamin D in several brands of pet food, and  
16 noting that it was working with a common contract manufacturer of pet food to  
17 provide a comprehensive list of affected brands.

18  
19 50. Despite the FDA's public warnings, Defendants continued to  
20 manufacture, sell and warrant its Contaminated Dog Foods, to the detriment of  
21 consumers and their pets alike instead of properly investigating and testing the  
22 Contaminated Dog Foods.

23  
24  
25 51. On January 31, 2019, Hill's announced an initial recall of canned  
26 Prescription Diet and Science Diet products. Hill's issued a press release detailing  
27 the risk of excessive Vitamin D consumption and identifying affected products.<sup>14</sup>  
28

1           52. Even though a video message included with the January 31, 2019 recall  
2 represented that the SKU and lot numbers identified in the January 31, 2019 recall  
3 were “confirmed to be the only affected products in this voluntary canned dog food  
4 recall[.]”, on February 8, 2019, Hill’s announced an expansion of the recall to include  
5 additional SKU and lot numbers of canned Prescription Diet and Science diet  
6 products.<sup>15</sup>  
7

8  
9           53. At the same time, Defendants have, and had, exclusive knowledge of  
10 the physical and chemical makeup of the Contaminated Dog Foods. Defendants also  
11 had exclusive knowledge of their suppliers, including where the ingredients are  
12 sourced, how the ingredients arrive at their manufacturing facilities, and the quality  
13 and content of the received ingredients. Defendants have publicly described their  
14 quality control procedure as follows:  
15

16  
17           (a) “We only accept ingredients from suppliers whose facilities meet  
18 stringent quality standards and who are approved by Hill’s.”  
19

20           (b) “Not only is each ingredient examined to ensure its safety, we  
21 also analyze each product's ingredient profile for essential nutrients to ensure  
22 your pet gets the stringent, precise formulation they need.”  
23

24           (c) “We conduct annual quality systems audits for all manufacturing  
25 facilities to ensure we meet the high standards your pet deserves.”  
26  
27  
28

1 (d) “We demand compliance with current Good Manufacturing  
2 Practices (cGMP) and Hill’s high quality standards, so your pet’s food is  
3 produced under clean and sanitary conditions.”  
4

5 (e) “We conduct final safety checks daily on every Hill's pet food  
6 product to help ensure the safety of your pet's food.”  
7

8 (f) “Additionally, all finished products are physically inspected and  
9 tested for key nutrients prior to release to help ensure your pet gets a consistent  
10 product bag to bag.”  
11

12 54. Defendants therefore had knowledge of the potential risk and inclusion  
13 of excessive Vitamin D in their Contaminated Dog Foods. Defendants received  
14 notice of potential Vitamin D contamination through consumer complaints. It also  
15 knew or should have known about the recall announcements by the FDA and other  
16 pet food manufacturers.  
17

18 55. Defendants also admit that the damages arising from the sale of the  
19 Contaminated Dog Foods far exceed the cost of purchasing the same. They have  
20 offered veterinary clinics \$500 vouchers for each can of Contaminated Food  
21 purchased to compensate them for the damages caused by the recall.  
22

23 **F. PRIVACY EXISTS WITH PLAINTIFF AND THE**  
24 **PROPOSED CLASS**

25 56. Defendants knew that consumers such as Plaintiff and the proposed  
26 Class would be the end purchasers of the Contaminated Dog Foods and the target of  
27 their advertising and statements.  
28

1           57. Defendants intended that the advertising, labeling, statements, and  
2 representations would be considered by the end purchasers of the Contaminated Dog  
3 Foods, including Plaintiff and the proposed Class.

4           58. Defendants directly marketed to Plaintiff and the proposed Class  
5 through statements on their website, labeling, advertising, and packaging.

6           59. Plaintiffs are the intended third-party beneficiaries of the contracts  
7 between Defendants and veterinarians and/or other third-parties.  
8

9  
10 **VI. CLASS ACTION ALLEGATIONS**

11           60. Plaintiff brings this action individually and on behalf of the following  
12 Class pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil  
13 Procedure:  
14

15           All persons who reside in the State of California who, from California,  
16 to the present, purchased the Contaminated Dog Foods in the State of  
17 California for household or business use, and not for resale (the  
18 “Class”);

19           61. Excluded from the Class are the Defendants, any parent companies,  
20 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees,  
21 co-conspirators, all governmental entities, and any judge, justice, or judicial officer  
22 presiding over this matter.  
23

24           62. This action is brought and may be properly maintained as a class action.  
25 There is a well-defined community of interests in this litigation and the members of  
26 the Class are easily ascertainable.  
27  
28

1           63. The members in the proposed Class are so numerous that individual  
2 joinder of all members is impracticable, and the disposition of the claims of the Class  
3 members in a single action will provide substantial benefits to the parties and Court.  
4

5           64. Questions of law and fact common to Plaintiff and the Class include,  
6 but are not limited to, the following:

- 7           (a) whether Defendants owed a duty of care to Plaintiff and the  
8 Class;
- 9           (b) whether the Contaminated Dog Foods that contained harmful  
10 and excess levels of Vitamin D are adulterated;
- 11           (c) whether Defendants knew or should have known that the  
12 Contaminated Dog Foods contained excess levels of Vitamin D  
13 or other ingredients that do not conform to the labels, packaging,  
14 advertising and statements;
- 15           (d) whether Defendants failed to test for the presence of excess  
16 Vitamin D or other ingredients that do not conform to the labels,  
17 packaging, advertising, and statements;
- 18           (e) whether Defendants wrongfully represented and continue to  
19 represent that the Contaminated Dog Foods are suitable for  
20 consumption by dogs, healthy, nutritious, premium, clinically  
21 approved, subject to strict quality control measures, and/or  
22 unadulterated;
- 23           (f) whether Defendants wrongfully represented and continue to  
24 represent that the manufacturing of the Contaminated Dog  
25 Foods is subjected to rigorous standards, including temperature;
- 26           (g) whether Defendants wrongfully failed to state that the  
27 Contaminated Dog Foods contained (or had a risk or probability  
28 of containing) excess levels of Vitamin D and/or unnatural or  
other ingredients that do not conform to the labels, packaging,  
advertising, and statements;
- (h) whether Defendants' representations in advertising, statements  
packaging, and/or labeling are false, deceptive, and misleading;

- (i) whether those representations are likely to deceive a reasonable consumer;
- (j) whether a reasonable consumer would consider the excessive Vitamin D or other ingredients that do not conform to the labels, packaging, advertising, and statements as a material fact in purchasing pet food;
- (k) whether Defendants had knowledge that their representations were false, deceptive, and misleading;
- (l) whether Defendants continue to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;
- (m) whether a representation that a product is suitable for consumption by dogs, healthy, nutritious, premium, clinically approved, subject to strict quality control measures, and/or unadulterated is material to a reasonable consumer;
- (n) whether Defendants' representations and descriptions on the labeling of the Contaminated Dog Foods are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (o) whether Defendants violated California state laws;
- (p) whether Defendants engaged in unfair trade practices;
- (q) whether Defendants' conduct was negligent;
- (r) whether Defendants' conduct was fraudulent;
- (s) whether Defendants made negligent and/or fraudulent misrepresentations and/or omissions;
- (t) whether Plaintiff and the members of the Class are entitled to actual, statutory, and punitive damages; and
- (u) whether Plaintiff and members of the Class are entitled to declaratory and injunctive relief.

65. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other

1 members of the Class. Identical statutory violations and business practices and  
2 harms are involved. Individual questions, if any, are not prevalent in comparison to  
3 the numerous common questions that dominate this action.  
4

5 66. Plaintiff's claims are typical of those of the members of the Class in  
6 that they are based on the same underlying facts, events, and circumstances relating  
7 to Defendants' conduct.  
8

9 67. Plaintiff will fairly and adequately represent and protect the interests of  
10 the Class, have no interests incompatible with the interests of the Class, and have  
11 retained counsel competent and experienced in class action, consumer protection,  
12 and false advertising litigation.  
13

14 68. Class treatment is superior to other options for resolution of the  
15 controversy because the relief sought for each member of the Class is small such  
16 that, absent representative litigation, it would be infeasible for members of the Class  
17 to redress the wrongs done to them.  
18

19 69. Questions of law and fact common to the Class predominate over any  
20 questions affecting only individual members of the Class.  
21

22 70. As a result of the foregoing, class treatment is appropriate.  
23  
24  
25  
26  
27  
28

**CAUSES OF ACTION**

**COUNT I**

**Breach of Express Warranty**

71. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

72. Defendants marketed and sold their Contaminated Dog Foods into the stream of commerce with the intent that the Contaminated Dog Foods would be purchased by Plaintiff and the Class.

73. Defendants expressly warranted, advertised, and represented to Plaintiff and the Class that their Contaminated Dog Foods are:

(a) Are “Premium Dog Food” that is suitable for consumption by dogs;

(b) Provide “Clinical Nutrition”;

(c) Are Manufactured using “rigorous” quality and safety standards;

(d) Are routinely subjected to numerous quality and safety checks, inspections, and audits throughout the manufacturing process;

(e) Contain “only the best ingredients from the most trusted sources”;

(f) Will “help enrich and lengthen the special relationships between people and their pets;” and

1 (g) Are unadulterated as they are available to purchase for the  
2 consumption of pets.

3 74. Defendants made these express warranties regarding the Contaminated  
4 Dog Foods' quality, ingredients, and fitness for consumption in writing through their  
5 websites, advertisements, and marketing materials and on the Contaminated Dog  
6 Foods' packaging and labels. These express warranties became part of the basis of  
7 the bargain that Plaintiff and the Class entered into upon purchasing the  
8 Contaminated Dog Foods.  
9

10 75. Defendants' advertisements, warranties, and representations were made  
11 in connection with the sale of the Contaminated Dog Foods to Plaintiff and the Class.  
12 Plaintiff and the Class relied on Defendants' advertisements, warranties, and  
13 representations regarding the Contaminated Dog Foods in deciding whether to  
14 purchase Defendants' products.  
15

16 76. Defendants' Contaminated Dog Foods do not conform to Defendants'  
17 advertisements, warranties and representations in that they:  
18

- 19 (a) Were adulterated and not sold as such;  
20  
21 (b) Are neither premium nor suitable for consumption by dogs;  
22  
23 (c) Do not provide "Clinical Nutrition";  
24  
25 (d) Were not Manufactured using "rigorous" quality and safety  
26 standards;  
27  
28

1 (e) Were not subjected to adequate quality and safety checks,  
2 inspections, and audits throughout the manufacturing process;

3 (f) Contained ingredients, including supplements, procured from  
4 suppliers known to sell adulterated ingredients; and  
5

6 (g) Harmed and shortened rather than “enrich[ed] and lengthen[ed]  
7 the special relationships between people and their pets.”  
8

9 77. Defendants were on notice of this breach as they were aware of the  
10 excessive Vitamin D levels that rendered their Contaminated Dog Foods unhealthy.

11 78. Privity exists because Defendants expressly warranted to Plaintiff and  
12 the Class that the Contaminated Dog Foods were suitable for consumption by dogs,  
13 healthy, nutritious, premium, clinically approved, subject to strict quality control  
14 measures, and/or unadulterated.  
15

16 79. As a direct and proximate result of Defendants’ conduct, Plaintiff and  
17 the Class have suffered actual damages in that they purchased Contaminated Dog  
18 Foods that were worth less than the price they paid and that they would not have  
19 purchased at all had they known of the risk and/or presence of excessive Vitamin D  
20 levels or other ingredients that do not conform to the products’ labels, packaging,  
21 advertising, and statements .  
22  
23  
24

25 80. Plaintiff and the Class seek actual damages, injunctive and declaratory  
26 relief, attorneys’ fees, costs, and any other just and proper relief available thereunder  
27  
28

1 for Defendants' failure to deliver goods conforming to their express warranties and  
2 resulting breach.

3  
4 **COUNT II**

5 **Breach of Implied Warranty of Merchantability**

6 81. Plaintiff incorporates by reference and realleges each and every  
7 allegation contained above, as though fully set forth herein.

8  
9 82. Defendants are merchants engaging in the sale of goods to Plaintiff and  
10 the Class.

11  
12 83. There was a sale of goods from Defendants to Plaintiff and the members  
13 of the Class.

14 84. At all times mentioned herein, Defendants manufactured or supplied  
15 the Contaminated Dog Foods, and prior to the time the Contaminated Dog Foods  
16 were purchased by Plaintiff and the Class, Defendants impliedly warranted to them  
17 that the Contaminated Dog Foods were of merchantable quality, fit for their ordinary  
18 use (consumption by dogs), and conformed to the promises and affirmations of fact  
19 made on the Contaminated Dog Foods' containers and labels, including that the  
20 Contaminated Dog Foods:  
21  
22

23  
24 (a) Are "Premium Dog Food" that is suitable for consumption by  
25 dogs;

26 (b) Provide "Clinical Nutrition";

27 (c) Are Manufactured using "rigorous" quality and safety standards;  
28

1 (d) Are routinely subjected to numerous quality and safety checks,  
2 inspections, and audits throughout the manufacturing process;

3 (e) Contain “only the best ingredients from the most trusted  
4 sources”; and  
5

6 (f) Will “help enrich and lengthen the special relationships between  
7 people and their pets;” and  
8

9 (g) Are unadulterated as they are available to purchase for the  
10 consumption of pets.

11 85. Plaintiff and the Class relied on Defendants’ promises and affirmations  
12 of fact when they purchased the Contaminated Dog Foods.  
13

14 86. The Contaminated Dog Foods were not fit for their ordinary use,  
15 consumption by dogs, and did not conform to Defendants’ affirmations of fact and  
16 promises as they contained excessive Vitamin D levels or other ingredients that do  
17 not conform to the products’ labels, packaging, advertising, and statements at levels  
18 material to a reasonable consumer.  
19  
20

21 87. Defendants breached the implied warranties by selling the  
22 Contaminated Dog Foods that failed to conform to the promises or affirmations of  
23 fact made on the container or label as each product contained excessive Vitamin  
24 D levels or other ingredients that do not conform to the products’ labels, packaging,  
25 advertising, and statements.  
26  
27  
28

1           88. Defendants were on notice of this breach as they were aware of the  
2 excessive Vitamin D levels included in the Contaminated Dog Foods and/or the risk  
3 of excessive Vitamin D levels, based on the recalls of other pet foods.  
4

5           89. Privity exists because Defendants impliedly warranted to Plaintiff and  
6 the Class through the warranting, packaging, advertising, marketing, and labeling  
7 that the Contaminated Dog Foods were suitable for consumption by dogs, healthy,  
8 nutritious, premium, clinically approved, subject to strict quality control measures,  
9 and/or unadulterated and by failing to make any mention of excessive Vitamin D  
10 levels or other ingredients that do not conform to the products' labels, packaging,  
11 advertising, and statements.  
12  
13

14           90. As a direct and proximate result of Defendants' conduct, Plaintiff and  
15 the Class have suffered actual damages in that they purchased Contaminated Dog  
16 Foods that were worth less than the price they paid and that they would have not have  
17 purchased at all had they known of the risk and/or presence of excessive Vitamin D  
18 levels or other ingredients that do not conform to the products' labels, packaging,  
19 advertising, and statements.  
20  
21

22           91. Plaintiff and the Class seek actual damages, injunctive and declaratory  
23 relief, attorneys' fees, costs, and any other just and proper relief available thereunder  
24 for Defendants' failure to deliver goods conforming to their implied warranties and  
25 resulting breach.  
26  
27  
28

### COUNT III

#### **Fraudulent Misrepresentation Against Defendants on Behalf of the Class**

92. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

93. Defendants falsely represented to Plaintiff and the Class that their Contaminated Dog Foods:

(a) Are “Premium Dog Food” that is suitable for consumption by dogs;

(b) Provide “Clinical Nutrition”;

(c) Are Manufactured using “rigorous” quality and safety standards;

(d) Are routinely subjected to numerous quality and safety checks, inspections, and audits throughout the manufacturing process;

(e) Contain “only the best ingredients from the most trusted sources”;

(f) Will “help enrich and lengthen the special relationships between people and their pets;”

(g) Are unadulterated as they are available to purchase for the consumption of pets.

94. Defendants intentionally and knowingly made these misrepresentations to induce Plaintiff and the Class to purchase their Contaminated Dog Foods.

1           95. Defendants knew that their representations about the Contaminated  
2 Dog Foods were false in that the Contaminated Dog Foods contain excessive  
3 Vitamin D levels or other ingredients that do not conform to the products' labels,  
4 packaging, advertising, and statements. Defendants allowed their packaging, labels,  
5 advertisements, promotional materials, and websites to intentionally mislead  
6 consumers, such as Plaintiff and the Class.  
7

8  
9           96. Plaintiff and the Class did in fact rely on these misrepresentations and  
10 purchased the Contaminated Dog Foods to their detriment. Given the deceptive  
11 manner in which Defendants advertised, represented, and otherwise promoted the  
12 Contaminated Dog Foods, Plaintiff and the Class's reliance on Defendants'  
13 misrepresentations was justifiable.  
14

15           97. As a direct and proximate result of Defendants' conduct, Plaintiff and  
16 the Class have suffered actual damages in that they purchased Contaminated Dog  
17 Foods that were worth less than the price they paid and that they would not have  
18 purchased at all had they known of the risk and/or presence of excessive Vitamin D  
19 levels or other ingredients that do not conform to the products' labels, packaging,  
20 advertising, and statements.  
21

22  
23           98. Plaintiff and the Class seek actual damages, injunctive and declaratory  
24 relief, attorneys' fees, costs, and any other just and proper relief available under the  
25 laws.  
26  
27  
28

**COUNT IV**

**Fraud by Omission Against Defendants on Behalf of the Class**

99. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

100. Defendants concealed from and failed to disclose to Plaintiff and the Class that their Contaminated Dog Foods contained excessive Vitamin D levels or other ingredients that do not conform to the products' labels, packaging, advertising, and statements.

101. Defendants were under a duty to disclose to Plaintiff and members of the Class the true quality, characteristics, ingredients and suitability of the Contaminated Dog Foods because: (1) Defendants were in a superior position to know the true state of facts about their products; (2) Defendants were in a superior position to know the actual ingredients, characteristics, and suitability of the Contaminated Dog Foods; and (3) Defendants knew that Plaintiff and the Class could not reasonably have been expected to learn or discover that the Contaminated Dog Foods were misrepresented in the packaging, labels, advertising, and websites prior to purchasing the Contaminated Dog Foods.

102. The facts concealed or not disclosed by Defendants to Plaintiff and the Class are material in that a reasonable consumer would have considered them important when deciding whether to purchase the Contaminated Dog Foods.



1           108. Defendants breached their duty to Plaintiff and the Class by  
2     formulating, testing, manufacturing, advertising, marketing, distributing, and selling  
3     products to Plaintiff that do not have the ingredients, qualities, characteristics, and  
4     suitability for consumption as advertised by Defendants and by failing to promptly  
5     remove the Contaminated Dog Foods from the marketplace or to take other  
6     appropriate remedial action in a timely manner.  
7

8  
9           109. Defendants knew or should have known that the ingredients, qualities,  
10    and characteristics of the Contaminated Dog Foods were not as advertised or suitable  
11    for their intended use, consumption by dogs, and were otherwise not as warranted  
12    and represented by Defendants. Specifically, Defendants knew or should have  
13    known that the Contaminated Dog Foods contained excessive Vitamin D levels or  
14    other ingredients that do not conform to the products' labels, packaging, advertising,  
15    and statements.  
16  
17

18           110. As a direct and proximate result of Defendants' conduct, Plaintiff and  
19    the Class have suffered actual damages in that they purchased Contaminated Dog  
20    Foods that were worth less than the price they paid and that they would not have  
21    purchased at all had they known they contained excessive Vitamin D levels or other  
22    ingredients that do not conform to the products' labels, packaging, advertising, and  
23    statements.  
24  
25

26           111. Plaintiff and the Class seek actual damages, injunctive and declaratory  
27    relief, attorneys' fees, costs, and any other just and proper relief available.  
28

**COUNT VI**

**Negligence**

112. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

113. The Contaminated Dog Foods manufactured, distributed, marketed, and sold by Defendants are pet food within the meaning of California law.

114. Defendants' conduct is negligent per se. Defendants violated their statutory duty under California law, which provides prohibits:

- a. The manufacture, sale, or delivery, holding or offering for sale of any pet food ingredient or processed pet food that is adulterated or misbranded
- b. The adulteration or misbranding of any pet food ingredient or processed pet food.
- c. The dissemination of any false advertising...
- d. Use of any pet food ingredient that fails to conform to the standard of identity for the pet food ingredient...

115. The Contaminated Dog Foods are "adulterated" within the meaning of California because "it bears or contains any poisonous or deleterious substance that may render it injurious to health," "If it contains a pet food ingredient for which a standard of identity has been established and the pet food ingredient fails to meet that standard" or "if damage or inferiority has been concealed in any manner."

1 116. Defendants failed to exercise due care when they sold the Contaminated  
2 Dog Foods to Plaintiff and the Class Members based on: (1) their exclusive  
3 knowledge of the ingredients, content, and sourcing materials of the Contaminated  
4 Dog Foods; (2) their failure to properly audit and monitor any third-party suppliers  
5 as publicly represented to Plaintiff and the Class; (3) allowing the inclusion of  
6 excessive Vitamin D in the Contaminated Dog Food; and (4) failing to recall the  
7 Contaminated Dog Foods in a timely manner.  
8  
9

10 117. Defendants' violations of these statutes were a substantial factor in the  
11 harm suffered by Plaintiff and the Class, including purchasing a product with *de*  
12 *minimis* value.  
13

14 118. By virtue of Defendants' negligence per se, Plaintiff and the Class have  
15 been damaged in an amount to be proven at trial or alternatively, seek rescission and  
16 disgorgement under this Count.  
17

## 18 **COUNT VII**

### 19 **Unjust Enrichment Against Defendants on Behalf of the Class**

20  
21 119. Plaintiff incorporates by reference and realleges each and every  
22 allegation contained above, as though fully set forth herein.  
23

24 120. Substantial benefits have been conferred on Defendants by Plaintiff and  
25 the Class through the purchase of the Contaminated Dog Foods. Defendants  
26 knowingly and willingly accepted and enjoyed these benefits.  
27  
28

1 121. Defendants either knew or should have known that the payments  
2 rendered by Plaintiff were given and received with the expectation that the  
3 Contaminated Dog Foods would have the qualities, characteristics, ingredients, and  
4 suitability for consumption represented and warranted by Defendants. As such, it  
5 would be inequitable for Defendants to retain the benefit of the payments under these  
6 circumstances.  
7

8  
9 122. Defendants' acceptance and retention of these benefits under the  
10 circumstances alleged herein make it inequitable for Defendants to retain the  
11 benefits without payment of the value to Plaintiff and the Class.  
12

13 123. Plaintiff and the Class are entitled to recover from Defendants all  
14 amounts wrongfully collected and improperly retained by Defendants, plus interest  
15 thereon.  
16

17 124. Plaintiff and the Class seek actual damages, injunctive and declaratory  
18 relief, attorneys' fees, costs, and any other just and proper relief available under the  
19 laws.  
20

## 21 **COUNT VIII**

### 22 **Violations of California's Consumers Legal Remedies Act, Cal. Civ.**

#### 23 **Code §§ 1750, *et seq.*, Against Defendants on Behalf of the Class**

24 125. Plaintiff incorporates by reference and realleges each and every  
25 allegation contained above, as though fully set forth herein.  
26  
27  
28

1           126. Plaintiff and each proposed Class member are a “consumer,” as that  
2 term is defined in section 1761(d) of the California Civil Code.

3           127. The Contaminated Dog Foods are “goods,” as that term is defined in  
4 section 1761(a) of the California Civil Code.  
5

6           128. Defendants are a “person” as that term is defined in section 1761(c) of  
7 the California Civil Code.  
8

9           129. Plaintiff and each proposed Class member's purchase of Defendants’  
10 products constituted a “transaction,” as that term is defined in section 1761(e) of the  
11 California Civil Code.  
12

13           130. Defendants’ conduct alleged herein violates the following provisions of  
14 California's Consumers Legal Remedies Act (the “CLRA”):

15                   (a) California Civil Code section 1770(a)(5), by representing that the  
16 Contaminated Dog Foods are pure, quality, healthy and safe for consumption and by  
17 failing to disclose that the Contaminated Dog Foods were in fact adulterated.  
18

19                   (b) California Civil Code section 1770(a)(7), by representing that the  
20 Contaminated Dog Foods were of a particular standard, quality, or grade, when they  
21 were in fact adulterated;  
22

23                   (c) California Civil Code section 1770(a)(9), by advertising the  
24 Contaminated Dog Foods with the intent not to sell them as advertised; and  
25  
26  
27  
28

1 (d) California Civil Code section 1770(a)(16), by representing that  
2 the Contaminated Dog Foods have been supplied in accordance with previous  
3 representations when they have not.

4  
5 131. As a direct and proximate result of these violations, Plaintiff and the  
6 Class have been harmed, and that harm will continue unless Defendants are enjoined  
7 from using the misleading marketing described herein in any manner in connection  
8 with the advertising and sale of the Contaminated Dog Foods.

9  
10 132. Plaintiff seeks an award of attorneys' fees pursuant to, inter alia, section  
11 1780(e) of the California Civil Code and section 1021.5 of the California Code of  
12 Civil Procedure.

13  
14 **COUNT IX**

15  
16 **Violations of California False Advertising Law, Cal. Bus. & Prof. Code §§**  
17 **17500,**  
***et seq.*, Against Defendants on Behalf of the Class**

18 133. Plaintiff incorporates by reference and reallege each and every  
19 allegation contained above, as though fully set forth herein.

20  
21 134. California's False Advertising Law ("FAL") prohibits any statement in  
22 connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof.  
23 Code § 17500.

24  
25 135. As set forth herein, Defendants' claims that the Contaminated Dog  
26 Foods are healthy and safe for consumption are literally false and likely to deceive  
27 the public.

1 136. Defendants' claims that the Contaminated Dog Foods are pure, quality,  
2 healthy, and safe for consumption are untrue or misleading because these claims fail  
3 to disclose that the Contaminated Dog Foods were in fact adulterated.  
4

5 137. Defendants' claim that the Contaminated Dog Foods are food that can  
6 be used to address specific medical and/or health issues because Defendants fail to  
7 disclose that the Contaminated Dog Foods were in fact adulterated with harmful and  
8 excessive levels of Vitamin D.  
9

10 138. Defendants knew, or reasonably should have known, that the claims  
11 were untrue or misleading.  
12

13 139. Defendants' conduct is ongoing and continuing, such that prospective  
14 injunctive relief is necessary, especially given Plaintiff's desire to purchase these  
15 products in the future if they can be assured that the Contaminated Dog Foods are  
16 properly unadulterated pet food and meet the advertising claims.  
17

18 140. Plaintiff and members of the Class are entitled to injunctive and  
19 equitable relief, and restitution in the amount they spent on the Contaminated Dog  
20 Foods.  
21

22 **COUNT X**

23  
24 **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,  
25 *et seq.*, Against Defendants on Behalf of the Class**

26 141. Plaintiff incorporates by reference and realleges each and every  
27 allegation contained above, as though fully set forth herein.  
28

142. The Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

**Fraudulent**

143. Defendants’ claims that the Contaminated Dog Foods are pure, quality, healthy, and safe for consumption are untrue or misleading because these claims fail to disclose that the Contaminated Dog Foods were in fact adulterated.

144. Defendants’ claim that the Contaminated Dog Foods are proper food to address specific medical and/or health issues because Defendants fail to disclose that the Contaminated Dog Foods were in fact adulterated with harmful and excessive levels of Vitamin D. As alleged herein, Defendants sold and advertised the adulterated Contaminated Dog Foods with false or misleading claims, such that Defendant's actions as alleged herein violate at least the following laws:

- the CLRA, Cal. Civ. Code §§ 1750, *et seq.*; and
- the FAL, Cal. Bus. & Prof. Code §§ 17500, *et seq.*

**Unfair**

145. Defendants’ conduct with respect to the labeling, advertising, marketing, and sale of the Contaminated Dog Foods is unfair because Defendants’ conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

1 146. Defendants' conduct with respect to the labeling, advertising,  
2 marketing, and sale of the Contaminated Dog Foods is also unfair because it violates  
3 public policy as declared by specific constitutional, statutory, or regulatory  
4 provisions, including, but not limited to, the FAL and the CLRA.  
5

6 147. Defendants' conduct with respect to the labeling, advertising,  
7 marketing, and sale of the Contaminated Dog Foods is also unfair because the  
8 consumer injury is substantial, not outweighed by benefits to consumers or  
9 competition, and not one consumers, themselves, can reasonably avoid.  
10

11 148. In accordance with section 17203 of the California Business &  
12 Professions Code, Plaintiff seeks an order enjoining Defendants from continuing to  
13 conduct business through fraudulent or unlawful acts and practices and to commence  
14 a corrective advertising campaign. Defendant's conduct is ongoing and continuing,  
15 such that prospective injunctive relief is necessary.  
16  
17

18 149. On behalf of himself and the Class, Plaintiff also seeks an order for the  
19 restitution of all monies from the sale the Contaminated Dog Foods, which were  
20 unjustly acquired through acts of fraudulent, unfair, or unlawful competition.  
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
24 situated, pray for judgment against the Defendants as to each and every count,  
25 including:  
26  
27  
28

1           A.     An order declaring this action to be a proper class action,  
2     appointing Plaintiff and her counsel to represent the Class, and requiring  
3     Defendants to bear the costs of class notice;  
4

5           B.     An order enjoining Defendants from selling the Contaminated  
6     Dog Foods until the levels of Vitamin D or other ingredients that do not  
7     conform to the products' labels, packaging, advertising, and statements are  
8     removed or full disclosure of the risk and/or presence of such appear on all  
9     labels, packaging, and advertising;  
10

11          C.     An order enjoining Defendants from selling the Contaminated  
12     Dog Foods in any manner suggesting or implying that they are suitable for  
13     consumption by dogs, healthy, nutritious, premium, clinically approved,  
14     subject to strict quality control measures, and/or unadulterated;  
15  
16

17          D.     An order requiring Defendants to provide a \$500 voucher to each  
18     member of the Class;  
19

20          E.     An order requiring Defendants to engage in a corrective  
21     advertising campaign and engage in any further necessary affirmative  
22     injunctive relief, such as recalling existing products;  
23

24          F.     An order awarding declaratory relief, and any further  
25     retrospective or prospective injunctive relief permitted by law or equity,  
26     including enjoining Defendants from continuing the unlawful practices  
27     alleged herein, and injunctive relief to remedy Defendants' past conduct;  
28

1           G.     An order requiring Defendants to pay restitution to restore all  
2 funds acquired by means of any act or practice declared by this Court to be an  
3 unlawful, unfair, or fraudulent business act or practice, untrue or misleading  
4 advertising, or a violation of California law, plus pre- and post-judgment  
5 interest thereon;  
6

7           H.     An order requiring Defendants to disgorge or return all monies,  
8 revenues, and profits obtained by means of any wrongful or unlawful act or  
9 practice;  
10

11           I.     An order requiring Defendants to pay all actual and statutory  
12 damages permitted under the counts alleged herein;  
13

14           J.     An order awarding attorneys' fees and costs, including the costs  
15 of pre-suit investigation, to Plaintiff and the Class; and  
16

17           K.     An order providing for all other such equitable relief as may be  
18 just and proper.  
19

### 20                           **JURY DEMAND**

21           Plaintiff hereby demands a trial by jury on all issues so triable.  
22  
23  
24  
25  
26  
27  
28

1 Dated: February 26, 2019

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

2  
3 By: /s/ Rebecca A. Peterson  
4 REBECCA A. PETERSON (241858)  
5 ROBERT K. SHELQUIST  
6 100 Washington Avenue South, Suite 2200  
7 Minneapolis, MN 55401  
8 Telephone: (612) 339-6900  
9 Facsimile: (612) 339-0981  
10 E-mail: rapeterson@locklaw.com  
11 rkshelquist@locklaw.com

12 STEPHENS & STEPHENS LLP  
13 Conrad B. Stephens (266790)  
14 505 South McClelland Street  
15 Santa Maria, CA 93454  
16 Telephone: (805) 922-1951  
17 Facsimile: (805) 922-8013  
18 E-mail: conrad@stephensfirm.com

19 ROBBINS ARROYO LLP  
20 KEVIN A. SEELY (199982)  
21 STEVEN M. MCKANY (271405)  
22 5040 Shoreham Place  
23 San Diego, CA 92122  
24 Telephone: (619) 525-3990  
25 Facsimile: (619) 525-3991  
26 E-mail: kseely@robbinsarroyo.com  
27 smckany@robbinsarroyo.com

28 CUNEO GILBERT & LADUCA, LLP  
CHARLES J. LADUCA  
KATHERINE VAN DYCK  
4725 Wisconsin Ave NW, Suite 200  
Washington, DC 20016  
Telephone: 202-789-3960  
Facsimile: 202-789-1813  
E-mail: kvandyck@cuneolaw.com  
charles@cuneolaw.com

1 LITE DEPALMA GREENBERG, LLC  
2 JOSEPH J. DEPALMA  
3 SUSANA CRUZ HODGE  
4 570 Broad Street, Suite 1201  
5 Newark, NJ 07102  
6 Telephone: (973) 623-3000  
7 E-mail: jdepalma@litedepalma.com  
8 scruzhodge@litedepalma.com

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**Attorneys for Plaintiff**